

## **Comments by Texans Uniting for Reform and Freedom (TURF) and Texans for Toll-free Highways on the Texas Department of Transportation**

December 9, 2016

Submitted by Terri Hall, Founder/Director of Texans Uniting for Reform and Freedom (TURF), and Texans for Toll-free Highways

Email: [terri@texasturf.org](mailto:terri@texasturf.org) or [terri@tollfreehighways.com](mailto:terri@tollfreehighways.com), Phone: 210-275-0640, Web: [www.TexasTURF.org](http://www.TexasTURF.org) and [www.TollfreeHighways.com](http://www.TollfreeHighways.com)

The Texas Department of Transportation (TxDOT) continues to struggle to meet even the minimum standards of public expectations. Whether it's project selection, project financing (toll or non-toll, design-build vs. DBFOM, leveraged debt vs pay-as-you-go), project delivery, or road maintenance, TxDOT remains lacking in all key areas seen and felt by the public on a daily basis. While the culture inside TxDOT has begun to change under new leadership, the fundamental views about the public, project delivery, and project management have seen little progress, from the public's perspective. No fundamental, measurable changes to its dealings with the public, its public meeting format, its project selection or delivery have been made.

### **Issue 1 -**

TxDOT has utterly failed to allocate funds and deliver substantial progress on the highest priority projects, especially in urban areas. The staff report states: "When selecting and prioritizing projects, TxDOT's approach tends to validate the status quo instead of ensuring the highest-priority projects receive the most focus and attention. TxDOT also continues to struggle with providing useful information and opportunities for meaningful public input.

"Existing project prioritization process validates status quo instead of advancing projects based on need or impact. TxDOT's current approach to prioritizing projects does not actually serve as a tool to evaluate which projects are strategically best, but rather works backwards to validate projects that are already in development."

This alone warrants moving up TxDOT's sunset review to 4 years. For example, in San Antonio, TxDOT announced its proposed list of projects for Prop 1 and Prop 7 funds for the next 10 years. They're largely neglecting to fund the most congested roads as Governor Abbott directed. It's clear TxDOT officials are trying to consume all the Prop 1 and Prop 7 funding on lower priority projects that don't register on the 100 Most Congested Roads List. By failing to address the major congestion problems, they can force a toll scenario and target commuters in two highly congested corridors — Loop 1604 and I-35 — to pay more for their road repairs than everyone else.

TxDOT included roads that were ALREADY FUNDED in the MPO's TIP, projects where the cost *DOUBLED* pre-announcement vs. post-announcement, and expansion projects on I-10 E (in areas that are not significantly congested and do not register on the 100 Most Congested Roads List) get to jump to the front of the line ahead of the top Most Congested segments in Bexar County.

The department has made a conscious decision to continue the status quo of politicization of project selection, like spreading projects around to various elected officials' districts rather than prioritize projects based on the greatest need (ie - 100 Most Congested Roads List, congestion levels/level of service, safety, ability to clear incidents, and poor design creating bottlenecks).

These decisions impact commuters on a daily basis and will lock-in funding scenarios for the next decade. **If TxDOT does not get this right, irreparable harm will be done to our urban areas forcing leveraged debt, punitively high tolls (congestion pricing), and possible loss of control over public infrastructure by having to rely on privately financed and operated toll roads in order to get any relief.**

Texans will not accept waiting another 12 years to fix these multi-billion dollar problems. Voters gave TxDOT the funding they needed to fix our highways (with passage of both Prop 1 and Prop 7 by overwhelming margins) without having to turn to new, punitively high and completely unaccountable toll taxes. They expect and deserve to have their highways expanded in the most efficient, cost-effective, and timely manner. They expect and deserve to have equal access for all people, regardless of mode, time of day, how many people are in their car or destination.

The staff report cites: "The Transportation Commission's current process for determining how much money to allocate to different statewide transportation goals tends to favor horse trading among various interests more than consideration of performance information, when it should and can be the other way around...TxDOT does not currently have well-developed, ingrained tools or processes in place to objectively analyze the potential impact of its category funding decisions across its overall strategic goals."

Governor Abbott expressly directed and promised Texas commuters that Prop 1 and Prop 7 funds would go to the most congested roads. He also expressly promised to fix our roads without raising taxes, fees, more debt or tolls. Yet toll roads continue full steam ahead. In fact, in meeting with the San Antonio District Engineer just this week, the D.E. made clear that neither the Commission nor the MPO have directed them not to do anymore toll roads, so they continue. We have a problem if the TxDOT districts do not take direction from the head of the executive branch of our state government, the governor. Who do they think they work for? They don't work for MPOs, or even the Commission. They work for the PEOPLE of Texas who pay their bills.

While no project is likely to ever achieve 100% public approval, the public and impacted residents must have their requests, suggestions, and feedback heeded without having to hire lawyers and lobbyists to achieve a positive outcome for all parties. TxDOT's responsiveness to the public and the public feedback at public hearings or commission meetings has not improved in any meaningful way despite a decade of controversy, litigation, sunset reviews, a management audit, and HB 20.

So the question is, how will this be remedied, by whom, and who will be responsible for ensuring a proper system is put in place, one that is transparent to the public, elected officials and decisions makers, and what consequences will there be and who will enforce them if TxDOT fails to comply in a timely manner? Waiting 12 years to review the agency again is wholly inadequate to ensure these funding/project selection decisions are remedied.

### **Issues 2, 3, & 6 -**

The staff report concludes: "As currently structured, TxDOT's project development process is not meeting expectations and is not prepared to effectively handle the influx of new transportation funding projected to double over the next decade. TxDOT has not met key on time or on-budget measures for several years, indicating underlying problems with the department's management of its project portfolio..."

"TxDOT has taken first steps to improve its project development process, but the state lacks assurances these efforts will be successful, requiring additional and continuing attention and oversight. TxDOT has a long history of problems with no quick fixes.

"...the Sunset review revealed significant weaknesses with TxDOT's current ability to address contractor delays and manage these contracts most effectively when problems arise.

"Overall, TxDOT does not effectively use available information to ensure selection of the most qualified professional engineering services contractors and negotiate similar pricing for similar work. The department lacks tools needed to most effectively select professional engineering services contractors and negotiate advantageous pricing.

"An August 2016 State Auditor's Office report also focused on TxDOT's lack of a fully established framework to most effectively procure *strategic* contracts." (ie - design build, CDAs or DBFOM)

It's incumbent upon the legislature to fix these problems, and kicking the can down the road for another 12 years before TxDOT undergoes another sunset review fails to hold the agency accountable in any meaningful way. TxDOT has a stubborn persistent problem identifying priority projects and delivering them in a timely, cost-effective, and efficient manner. Taxpayers cannot wait 12 years to have these problems resolved. It's too late to fix it if they've already misspent \$80 billion in new funding, nearly double previous estimates.

#### Issue 5 -

The report explains: "Despite spending more than \$100 million on private management consulting contracts to improve performance since 2010, TxDOT has little information to clearly evaluate the results of these multiple, expensive efforts. TxDOT does not centrally track or evaluate these contracts and lacks criteria needed to ensure efficient use of existing internal resources already dedicated to performance improvement."

This speaks to the inability to leave this agency to grope in the darkness and get a free pass for 12 years without frequent sunset reviews. If the \$100 million spent on private management consulting lacked measurable results, what about the \$100 million spent on the toll collection contract with Xerox that set-off another firestorm of double billing, overbilling, and threats to destroy drivers' credit if they didn't pay up on the erroneous bills until the two transportation committees weighed-in once the press made it public?

The seemingly endless struggles with TxDOT's ability to function appropriately and to oversee the massive contracts being outsourced to private contractors begs more oversight than an occasional trotting before the two transportation committees or joint oversight committee, where very little is resolved or revealed in public and where TxDOT is allowed to keep its flaws hidden behind it's constant rejoinder to committee members: 'I don't have that information today, but I'll get it to the committee' at a later time, when the public isn't privy to it.

The legislative oversight committee recommended will not have the extensive ability to probe as the sunset review process requires. Twelve years is not soon enough nor an adequate timeframe to ensure the public proper controls are in place. The attitude inside the agency even now is 'we got off easy this time.' There is no motivation to make the needed improvements when they won't be scrutinized for another 12 years.

**Conclusion -**

Sunset staff needs to put more teeth into its recommendations. They can start by adopting a 4-year sunset timeframe rather than pushing it out to 12 years. With the extensive problems with project selection, public involvement, lack of oversight, and contracting problems, TxDOT is not at a place where such a hands-off approach is warranted. A joint legislative oversight committee cannot possibly tackle the numerous problems identified, and, frankly, the agency cannot yet be trusted to implement the many recommendations on its own without consistent, frequent oversight by staff, such as the Sunset staff. Elected officials' schedule constraints and varying priorities they juggle cannot adequately watchdog such a massive agency effectively through occasional interim hearings.

Texans desire and deserve better than they've been getting for their multi-billion dollar investments in TxDOT. With funding almost doubling in the next 10 years and with so many aspects of project selection and public involvement severely in flux and lacking in meaningful progress, the legislature and Sunset must engage in constant oversight and a shorter review timeframe. While some progress has been made, TxDOT has a long way to go before public trust is fully restored.

The Sunset Act is designed to ensure open, responsive, and effective government. The litany of problems outlined in this report shows nearly every area of the department does not operate efficiently, effectively, or in a fiscally responsible manner taxpayers expect and deserve. The agency still struggles with being responsive to the public. When opposition arises or when feedback asks them to abandon an alternative, TxDOT continues to defend its decisions and the status quo rather than listen to its customers who pay the bills and change course if needed.

Examples in the report cite the Texas Workforce Commission that made big changes in just 4 years. TxDOT has had 7 years to implement significant changes, and yet significant problems remain, costing taxpayers millions.

Taxpayers cannot trust that \$80 billion in new funding will be spent on the highest and best projects without the threat of a near term sunset hanging over their heads. If you give them a 12 year timeframe, it'll be back to business as usual for the next decade. Please keep the pressure on this agency. Think of how hard it is for you, as a state lawmaker, to get information out of TxDOT at times. I hear frustration even from Transportation Committee members who cannot get the information they request from TxDOT. Imagine then that you're just John Q member of the public. Your chances of getting information, steering TxDOT another direction, or succeeding in getting the agency to adopt a different alternative is slim to none. Customers need to become king, and that can't happen without significant, broad changes in the culture and operation of TxDOT. Please help us get there!

**From:** [Sunset Advisory Commission](#)  
**To:** [Cecelia Hartley](#)  
**Subject:** FW: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Wednesday, November 30, 2016 4:59:49 PM  
**Importance:** High

---

-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]  
Sent: Wednesday, November 30, 2016 4:50 PM  
To: Sunset Advisory Commission  
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: TEXAS DEPARTMENT TRANSPORTATION TXDOT

First Name: Terri

Last Name: Hall

Title: Founder/Director

Organization you are affiliated with: Texans Uniting for Reform and Freedom (TURF) and Texans for Toll-free Highways

Email: terri@texasturf.org

City: San Antonio

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

The Texas Department of Transportation (TxDOT) continues to struggle to meet even the minimum standards of public expectations. Whether it's project selection, project financing (toll or non-toll, design-build vs. DBFOM, leveraged debt vs pay-as-you-go), project delivery, or road maintenance, TxDOT remains lacking in all key areas seen and felt by the public on a daily basis. While the culture inside TxDOT has begun to change under new leadership, the fundamental views about the public, project delivery, and project management have seen little progress, from the public's perspective. Indeed, TxDOT's response to HB 20 reforms was 'nothing to see here,' all is good now that we have a new governor. No fundamental, measurable changes to project selection or delivery have been made.

Issue 1 -

TxDOT has utterly failed to allocate funds and deliver substantial progress on the highest priority projects, especially in urban areas. The staff report states: "When selecting and prioritizing projects, TxDOT's approach tends to validate the status quo instead of ensuring the highest-priority projects receive the most focus and attention. TxDOT also continues to struggle with providing useful information and opportunities for meaningful public input."

This alone warrants moving up TxDOT's sunset review to 4 years. For example, in San Antonio, TxDOT announced its proposed list of projects for Prop 1 and Prop 7 funds for the next 10 years. They're largely neglecting to fund the most congested roads as Governor Abbott directed. It's clear TxDOT officials are trying to consume all the Prop 1 and Prop 7 funding on lower priority projects that don't address the major congestion problems so that they can force a toll scenario and target commuters in two highly congested corridors — Loop 1604 and I-35 — to pay more for their road repairs than everyone else.

TxDOT included roads that were ALREADY FUNDED in the MPO's TIP, projects where the cost DOUBLED pre-announcement vs. post-announcement, and expansion projects on I-10 E (in areas that are not significantly congested and do not register on the 100 Most Congested Roads List) get to jump to the front of the line ahead of the top Most Congested segments in Bexar County in order to prop-up the failed SH 130 and more.

We find this statement in the staff report to be inaccurate based on proposed projects in the urban areas: "Future project selection process for new money is currently unresolved. Though the commission decided how much money to allocate to each of the 12 funding categories when it adopted the 2017 UTP in August 2016, the department and its planning partners have not yet actually selected projects or much of the new funding, most of which will ultimately fund larger, more complex projects."

TxDOT has announced proposed projects (many of which were already under development) and the majority of the funding is not going to larger, more complex projects. It's going to lesser priority projects leaving the larger, more complex ones to be tolled.

The department has made a conscious decision to continue the status quo of politicization of project selection, like spreading projects around to various elected officials' districts rather than prioritize projects based on the greatest need (ie - 100 Most Congested Roads List, congestion levels/level of service, safety, ability to clear incidents, and poor design creating bottlenecks).

These decisions impact commuters on a daily basis and will lock-in funding scenarios for the next decade. If TxDOT does not get this right, irreparable harm will be done to our urban areas forcing leveraged debt, punitively high tolls (congestion pricing), and possible loss of control over public infrastructure by having to rely on privately financed and operated toll roads in order to get any relief. Many of these managed lane toll projects have not proven to relieve congestion. In fact, TxDOT's own Transtar data on I-10 Katy Freeway shows higher congestion levels AFTER the managed lanes opened. Data from 2011 to 2014 shows the average morning commute time increased 25 minutes or 30% and the average afternoon commute increased 23 minutes or 55%.

Restricting access to the new capacity merely displaces the congestion onto the already jammed general purpose lanes, in essence, nullifying the benefits of constructing new lanes and largely wasting \$2.8 billion in scarce road funds. Texans will not accept waiting another 12 years to fix these multi-billion dollar problems. Voters gave TxDOT the funding they needed to fix our highways (with passage of both Prop 1 and Prop 7 by overwhelming margins) without having to turn to new, punitively high and completely unaccountable toll taxes. They expect and deserve to have their highways expanded in the most efficient, cost-effective, and timely manner. They expect and deserve to have equal access for all people, regardless of mode, time of day, how many people are in their car or destination.

The staff cites: "The Transportation Commission's current process for determining how much money to allocate to different statewide transportation goals tends to favor horse trading among various interests more than consideration of performance information, when it should and can be the other way around...TxDOT does not currently have well-developed, ingrained tools or processes in place to objectively analyze the potential impact of its category funding decisions across its overall strategic goals."

The Transportation Commission did not choose a funding formula for Prop 1 and Prop 7 that can possibly address the urban congestion problem without new taxes, primarily tolls. Giving both metro areas and rural areas an equal percentage of the funding pie fails to account for the dire need for very expensive, large, and complex projects in the urban areas to get long-awaited, badly needed funding to address decades-old congestion problems. It is not only feasible but prudent to re-work the Prop 1 and Prop 7 level of funding to provide adequate funding to address urban congestion, since that is where the problem lies and that's what Governor Abbott expressly directed and promised to Texas commuters. It's not too late, and it's incumbent upon the legislature and sunset review process to ensure these major issues get resolved immediately.

"Texans deserve to have at least some basic, publicly available performance information to better understand the tradeoffs involved in these funding decisions and to have as a basis for providing input and tracking progress," advocates the Sunset report. This objective cannot be met if TxDOT does not undergo sunset review for another 12 years.

We agree with the staff's assessment of project selection: "Existing project prioritization process validates status quo instead of advancing projects based on need or impact. TxDOT's current approach to prioritizing projects does not actually serve as a tool to evaluate which projects are strategically best, but rather works backwards to validate projects that are already in development."

So the question is, how will this be remedied, by whom, and who will be responsible for ensuring a proper system is put in place, one that is transparent to the public, elected officials and decisions makers, and what consequences will there be and who will enforce them if TxDOT fails to comply in a timely manner? Waiting 12 years to review the agency again is wholly inadequate to ensure these funding/project selection decisions are remedied.

It's appropriate to say a word about public outreach here. When landowners and affected residents come before the Commission on a virtually monthly basis (like the Loop 249 toll project through Grimes County) and ask the department to re-work a project without tolls, to upgrade an existing highway instead of plowing a new one through their property, or to simply re-route a proposed highway, and TxDOT fails to heed their pleas, we have a broken public involvement process. While no project is likely to ever achieve 100% public approval, the public and impacted residents must have their requests, suggestions, and feedback heeded without having to hire lawyers and lobbyists to achieve a positive outcome for all parties. TxDOT's responsiveness to the public and the public feedback at public hearings or commission meetings has not improved in any meaningful way despite a decade of controversy, litigation, sunset reviews, a management audit, and HB 20.

Another example, the US 281 project in Bexar County. While finally dropping the toll element last year, after two rounds of litigation, a rigged environmental study process that resulted in one employee being fired and another re-assigned and a full-blown 5-year Environmental Impact Statement, as well as a sustained, fierce political battle, TxDOT refuses to drop the HOV-transit requirement to access the new lane paid for with road tax money. The public overwhelmingly rejects the HOV-transit restriction and wants that new capacity to be open to ALL cars, yet TxDOT stubbornly refuses to heed the public outcry. As with the Katy managed lanes, restricted lanes do not alleviate congestion, they displace it and cause the congestion on the general purpose lanes to remain and worsen. So the San Antonio TxDOT district is about to expend \$538 million on adding a lane that will not alleviate or measurably improve congestion. Once again, it's the bureaucrats' 'we know best' attitude. Rather than hear the public, they believe they know what's best for everyone else and they should decide who gets access to a fast ride and who doesn't.

The report discusses the UTP and lack of public involvement. We have attempted to track and follow TxDOT's transportation decision-making and project selection process for over a decade, and we're very familiar with planning both at the local and state level. Yet, the public has no tools to help discern how each UTP update differs from the existing one, what criteria was used to advance or include listed projects, delete others, or how the new amendments effect existing projects. There must be a simple, more effective way for the public to gauge TxDOT's proposals and likewise for the public to have meaningful feedback on TxDOT's proposed projects BEFORE any final decisions/adoption are made. The current process amounts to TxDOT checking a box for public involvement, shutting out the public's ability to actually effect project selection if it differs from TxDOT's pre-determined list.

Issues 2, 3, & 6 -

The staff report concludes: "As currently structured, TxDOT's project development process is not meeting expectations and is not prepared to effectively handle the influx of new transportation funding projected to double over the next decade. TxDOT has not met key on time or on-budget measures for several years, indicating underlying problems with the department's management of its project portfolio..."

It's incumbent upon the legislature to fix this problem, and kicking the can down the road for another 12 years before TxDOT undergoes another sunset review fails to hold the agency accountable in any meaningful way. As we stated under issue 1, TxDOT has a stubborn persistent problem identifying priority projects and delivering them in a timely, cost-effective, and efficient manner. Taxpayers cannot wait 12 years to have these problems resolved. It's too late to fix it if they've already misspent \$80 billion in new funding, nearly double previous estimates.

The RMA/MPO red herring

TxDOT has also been allowed to avoid accountability for project delivery and has failed to institute the most basic cost controls by deferring many projects to local boards like Regional Mobility Authorities (RMAs) and

Metropolitan Planning Organizations (MPOs). RMAs are neither transparent nor accountable to taxpayers. Oversight is almost non-existent. Cost overruns, re-dos, design and engineering flaws (10 pillars on 290 in Austin were deemed flawed and had to be altered or completely re-built), soaring project costs, incessant delays, and being tone-deaf to the public characterize several RMAs, especially those in the urban areas.

There have been well-documented conflicts of interest among RMA board members (whether real estate interests, contracts being directed to current or former board members, etc.) and yet no one is held accountable, nothing changes, and life goes on business as usual. The CTRMA tripled the cost of its US 183 toll managed lane project with a flimsy at best explanation to MPO board members or the public. It's cost overruns on MoPac were \$60 million (and counting) and persistent delays caused the lanes to open a year behind schedule, with part of it still not open. The contractor, CH2M, went through four project managers, cycled through six different people for construction manager, and it had four different project schedulers.

No one at the RMA has the foggiest idea of how to oversee the design or construction of complex, multi-billion dollar public road projects much less deliver projects any better than the beleaguered TxDOT. With Executive Director of the CTRMA Mike Heiligenstein getting paid \$366,112 in compensation to run an agency with 21 employees, which is more than the top job at TxDOT, an agency with over 11,000 employees, we have a bloat problem.

You can scarcely find any board vote that isn't unanimous. Like MPOs, the fix is in prior to board meetings, which is the only opportunity for public involvement or feedback. No matter the level of public feedback, RMAs and MPOs ignore it with impunity. The public doesn't get to decide who sits on an RMA board or MPO board. So many in affected areas have no chance of their voice being heeded, since they lack representation on these boards. TxDOT oft reply to negative public feedback is 'that was an RMA (or MPO) decision.' So the finger gets pointed and the buck gets passed, but the public gets railroaded and ignored, and the controversy and lack of trust in TxDOT and transportation agencies at all levels escalates, unchecked.

This is in large part due to the lack of oversight of the 25 TxDOT districts by TxDOT administration. District Engineers are kings of their own fiefdoms and enable RMAs and MPOs to be their fall guys and absolve them of their responsibilities to deliver STATE highway projects efficiently and in a way that's responsive to the public. The public shouldn't have to travel around to three different transportation boards (who all meet during the work day) to try and effect change on an unwanted or controversial project on the state highway system.

The Sunset Commission should recommend RMAs be abolished and operations taken over by the state (ie - TxDOT). Chopping up our state highway system into a patchwork quilt controlled by various little city-states is inefficient, causes turf battles, increases the cost to taxpayers, and lacks transparency, accountability, and leads to abuses and conflicts of interest the state has no way of controlling. Yet, Texas taxpayers have given \$3 billion in state funds to RMAs with little to show for it and lots to be concerned about. The Border West Highway toll project in El Paso was built entirely with state funds, yet the Camino Real RMA ended up with over 80% ownership of the toll revenues.

Texas taxpayers will never get their money back and there has been no accountability or recourse to right everything that went wrong with that corrupt project. RMAs are unaccountable boards that vehemently lobby for more power and relentlessly defend against any attempts at greater oversight or accountability. The taxpayers don't have a prayer of reining-in RMAs. The state must step-in immediately.

Design-Build = costly, crony contracts

Sunset staff reports: "TxDOT also has not provided basic tools to assist its districts in managing a dramatic increase in the use of outsourced construction engineering inspectors, risking inefficient use and poor oversight of the critical quality assurance role these inspectors provide.

Additionally, TxDOT recently decentralized responsibility for managing large, complex strategic contracts such as design-build without a clear plan for ensuring effective accountability and oversight."

The Sunset staff contends: "TxDOT lacks standard, effective remedies and oversight tools to quickly address construction delays caused by poorly performing contractors, which have resulted in significant negative impacts on businesses and the traveling public in recent years."



Design-build contracting is almost exclusively used by unaccountable RMAs, and it has opened the door to cronyism and abuse. It's also allowed TxDOT to get away with lazy planning and design. They pull a design-build contract off the shelf when they're caught flat-footed and use it to bail them out of proper project planning and design. The lack of preparedness on TxDOT's part to have projects' early planning phases complete and ready for funding when it comes online has led to its dirty letting problem and persistently being behind the 8-ball when it comes to right-of-way acquisition.

This lack of preparedness is costing taxpayers money and unnecessarily delaying construction of vital projects.

TxDOT's contracting is in chaos.

The Sunset staff report and State Audit completed in August have identified many inefficiencies, lack of oversight, lack of proper training, and many other glaring problems that must be addressed immediately. The legislature must insist another sunset review occur within 4 years and must implement constant oversight until then in order to ensure TxDOT's poor performance gets fixed before millions more is wasted.

With design-build, not only does the 'best value' bidding process allow unelected boards to direct contracts to their buddies and the well-connected since it kicks low-bid contracts to the curb, it allows a firm to design the project as they build it — leaving tremendous open questions for residents and the public at the critical public hearing phase of a project.

The Alamo RMA could not answer residents' questions as to where on-and-off ramps would be on the 281/1604 interchange project at its only public hearing for the project. Yet, the Alamo RMA expected the public to weigh-in with feedback when they had no project details to inform their decision. How can a project's design reflect the needs of the residents and the community when it's not even designed sufficiently enough to answer even the most basic questions about access, noise, and traffic impacts early enough for plans to be adjusted?

Another flaw in design-build contracts is cost creep. The cost sneaks up long after officials are tuned-in. 'Best value' bidding does not provide for an apples to apples comparison of bids, since the companies are not bidding on the same design as they are in a traditional low-bid, design-bid-build contract. So decision makers have no hard data to compare bids with — no objective measures like a certain number of overpasses, ramps, or a fixed amount of asphalt, rebar or concrete. It's anybody's guess as to which team will be truly the 'best value' for the taxpayer.

'Best value' bidding and incessant change orders are just two of the ways these companies game the system and the taxpayers. TxDOT has decades of experience overseeing contract and contractors who build and maintain our highway system and the sunset staff identified plenty of problems overseeing these contracts at TxDOT. RMAs have no experience and lack proper oversight, costing taxpayers dearly for duplicative layers of bureaucracy that is better handled by TxDOT.

Additionally, design-build and DBFOM CDAs are inherently high risk and very complex requiring legal counsel to navigate many of the provisions. All of this adds up to a greater cost to taxpayers and greater potential for delay or even having to procure the project over again when problems cannot be resolved. Sunset staff should recommend authority for design-build and all CDAs cease. TxDOT has enough problems with its traditional low-bid contracting to iron out. The hopelessly complex design-build contracts and CDAs add unnecessary layers of cost and training that are not worth any potential gains.

Toll viability

Toll projects also add additional layers of complexity that reap very little benefit to taxpayers when it comes to transparency and overall cost.

The Alliance for Toll-free Interstates released a study earlier this year that examines the problem of toll feasibility studies and traffic and revenue forecasts for toll roads.

Here's just the highlights from the report:

1) In a 2014 analysis in the journal Transportation, researchers found "With rare exception, actual toll road traffic in many countries has failed to reproduce forecast traffic levels."

2) According to a 2006 report from The Denver Post, "there is no incentive for the [tolling] estimates to be accurate.

Even when wrong, the bonds are simply refinanced and the consultants are paid again for their work on new studies to support the new bonds.”

3) According to a 2010 literature review, academics at the University of Texas concluded “tolled projects tend to suffer from substantial optimism bias in forecasts, with predicted traffic volumes exceeding actual volumes by 30% or more about half of the time.”

4) The National Cooperative Highway Research Program (NCHRP) has stated there is “no standardization in the toll road demand and revenue modeling and forecasting processes.”

This makes judging the accuracy of the toll feasibility studies nearly impossible given the data both national and globally. When an agency or report claims a road is toll feasible, it really cannot be stated with much accuracy. In our many years of studying these same toll studies, we’ve concluded that the consultants say whatever they have to in order to secure the bonds.

In our experience, these companies, and often even some public officials, will tell you what you want to hear to get the contract signed, only to have the reality be entirely different. What then? You’re stuck with a 40-50 year contract that will outlast us all. Termination clauses can be more expensive than the cost to build the road. Private operators/investors usually insist on being compensated for predicted future loss of toll revenue plus inflation — which is a figure determined by them (not based on calculations of actual toll revenue history) — making it out of reach since toll revenue forecasts can be wildly off (usually 30%-50%).

So it’s very difficult to get accurate information from which to judge these types of projects. It may look good on paper (to get the deal signed) only to go south very quickly. When a project defaults, it gets handed to his creditors like SH 130, which means the state may be dealing with a foreign company (since most toll concessions companies are international) and/or investors who may not honor the provisions originally negotiated. In bankruptcy court, it could open a pandora’s box that the state or a toll entity didn’t bargain for.

The state and its agent, TxDOT, need to get away from their reliance on debt and toll projects to bail them out of their fiscal constraints. The legal costs, the toll viability studies, greater contracting and construction complexity, the toll collection equipment and costs, and therefore higher costs, and the delays due to controversy make toll roads the most expensive, most complex option not worthy of the claimed benefits of a supposedly quicker project delivery.

#### Issue 5 -

The report explains: “Despite spending more than \$100 million on private management consulting contracts to improve performance since 2010, TxDOT has little information to clearly evaluate the results of these multiple, expensive efforts. TxDOT does not centrally track or evaluate these contracts and lacks criteria needed to ensure efficient use of existing internal resources already dedicated to performance improvement.”

This speaks to the inability to leave this agency to grope in the darkness and get a free pass for 12 years without frequent sunset reviews. If the \$100 million spent on private management consulting lacked measurable results, what about the \$100 million spent on the toll collection contract with Xerox that set-off another firestorm of double billing, overbilling, and threats to destroy drivers’ credit if they didn’t pay up on the erroneous bills until the two transportation committees weighed-in once the press made it public? The seemingly endless struggles with TxDOT’s ability to function appropriately and to oversee the massive contracts being outsourced to private contractors begs more oversight than an occasional trotting before the two transportation committees or joint oversight committee, where very little is resolved or revealed in public and where TxDOT is allowed to keep its flaws hidden behind it’s constant rejoinder to committee members: ‘I don’t have that information today, but I’ll get it to the committee’ at a later time, when the public isn’t privy to it.

#### Issue 9 -

We strongly urge the Sunset Commission to extend TxDOT for only 4 years. With the problems still identified in this report, the fact the department is woefully unprepared to deliver projects the public wants efficiently, on-budget, and in a timely manner, and the fact the department is completely unprepared to handle the influx of over \$4 billion in new funding, the legislature MUST engage in close oversight over the agency. The legislative oversight committee recommended will not have the extensive ability to probe as the sunset review process requires. Twelve years is not soon enough nor an adequate timeframe to ensure the public proper controls are in place. The attitude

inside the agency even now is 'we got off easy this time.' There is no motivation to make the needed improvements when they won't be scrutinized for another 12 years.

#### Issue 10 -

The staff report indicates roughly \$3.3 million in net savings to the taxpayers if recommendations are implemented. However, we feel a larger savings has been seriously overlooked: engineering and design-build costs. TxDOT should not be mandated to outsource so much of its engineering and design work. TxDOT has lost its internal expertise to such a point that it no longer has the staff to hold outside contractors to the standards necessary to avoid re-dos, cost overruns, and delays due to poor construction or design work. We have studied MPO TIP and MTP documents for over a decade. We have witnessed engineering costs soar from what once could be as low as 1-3% of the project cost to now over 13% of the project cost in many cases. The outsourcing of engineering services is likely the culprit. Per the staff report, outsourced engineering has gone from less than \$500 million a year in 2010-2012 to over \$1.5 billion in 2016. There are no controls over these rising costs and the public is losing millions if not billions on engineering that should be spent on actual asphalt, cement and road improvements. There needs to be greater scrutiny and cost-benefit analysis of whether the money saved by fewer FTEs actually results a net reduction in the overall cost of engineering to taxpayers.

Contingencies, indirect costs, and preliminary and construction engineering costs listed in MPO documents are way out of balance from even 10 years ago.

Why aren't these costs being scrutinized, explained, and justified in a way that's transparent to the public and decisions makers?

#### Any Alternative or New Recommendations on This Agency:

Our recommendations can be found throughout the above comments in response to the Sunset staff report recommendations.

#### Conclusion -

Sunset staff needs to put more teeth into its recommendations. They can start by adopting a 4-year sunset timeframe rather than pushing it out to 12 years.

With the litany of problems with project selection, public involvement, lack of oversight, and contracting problems, TxDOT is not at a place where such a hands-off approach is warranted. A joint legislative oversight committee cannot possibly tackle the numerous problems identified, and, frankly, the agency cannot yet be trusted to implement the many recommendations on its own without consistent, frequent oversight by staff, such as the Sunset staff.

Elected officials' schedule constraints and varying priorities they juggle cannot adequately watchdog such a massive agency effectively through occasional interim hearings.

Texans desire and deserve better than they've been getting for their multi-billion dollar investments in TxDOT. With funding almost doubling in the next 10 years and with so many aspects of project selection and public involvement severely in flux and lacking in meaningful progress, the legislature and Sunset must engage in constant oversight and a shorter review timeframe. While some progress has been made, TxDOT has a long way to go before public trust is fully restored.

My Comment Will Be Made Public: I agree